



# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

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Amanda Punton  
Oregon Ocean Coastal Management Program  
800 NE Oregon St. #18  
Portland, OR 97232

In response to your request for clarifications, as requested in the NOAA and EPA Region 10 comments on the state's April 1999 Submittal on the Coastal Nonpoint Source Pollution Control Program, the Oregon Water Resources Department offers the following.

Every surface water application submitted to the Department undergoes a review process. During the initial review process, if an application falls within a 303(d) area, a copy of the initial review and an application summary are sent to the Oregon Department of Environmental Quality (DEQ) for comment. DEQ may request that the water right permit be denied or that the permit be conditioned to insure compliance with water quality standards.

The Department has provided DEQ a list of standard conditions that may be used. This list, however, is a guideline and beginning point and other conditions may be suggested. Attached as "A" are a few samples of conditions from the standardized list which may be used in permits where additional conditions are needed to address water quality issues. Furthermore, where a permit is for the storage of water, conditions for construction of the dam, as well as maintenance and operation, are usually added to the permit. An example of some of these standardized conditions is provided in attachment "B." These conditions can also be modified to fit each particular situation.

Likewise, where a permit application falls within an area where sensitive, threatened or endangered species are listed, the application is reviewed under Oregon Administrative Rule OAR 690-33-000, also known as the Division 33 process. Through a memorandum of understanding with DEQ, the Oregon Fish and Wildlife Service and the Oregon Department of Agriculture, applications that are received where diversions will occur in areas where listed species may be present are sent to these agencies for review. Under the Division 33 process, the agencies may request that the permit application be denied or that the permit be conditioned to insure that no loss of habitat for threatened or endangered species or no net loss for sensitive species will occur.

During the next stage of the review process, under OAR 690-310-110, the public interest presumption rules for surface water, the Department determines whether the public interest



presumption is established for the proposed water use. If the Department determines that the public interest presumption is established, or that the proposed use can be modified to meet the presumption, the Department then evaluates the proposed use to determine whether the presumption is overcome.

In making that determination, the Department, at a minimum, considers the factors listed below from OAR 690-310-120(3), including any potential effects that the proposed use may have on these factors, where applicable:

- (A) Water use efficiency and the avoidance of waste;
- (B) Threatened, endangered or sensitive species;
- (C) Water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set under section 303 (d) of the federal Clean Water Act and sources which the Environmental Quality Commission has classified as outstanding resource waters as defined in OAR 340-041-0006(42) ;
- (D) Fish or wildlife;
- (E) Recreation;
- (F) Economic development; and
- (G) Local comprehensive plans, including supporting provisions such as public facilities plans.

If the presumption is not overcome, a permit is usually issued. If a permit is issued, any conditions that are suggested by any of the agencies are usually included in the permit.

Permittees are required to follow the conditions set forth in their permits. Failure to do so may result in cancellation of the permit, denial of an extension request, or denial of a water right certificate. The enforcement of statutes and/or rules promoted by the conditions are the responsibility of the agency normally charged with the enforcement of such laws.

The WRD hopes this answers any questions or concerns you may have. If you have any additional questions or concerns, please do not hesitate to contact us.



Dick Bailey  
Administrator  
Water Right / Adjudication Division

cc: Doug Parrow  
Dwight French

## ATTACHMENT A

- Water may be diverted only when Department of Environmental Quality sediment standards are being met.
- The water user shall install and maintain adequate treatment facilities meeting current DEQ requirements to remove sediment before returning the water to the stream.
- The period of use has been limited to \_\_\_\_\_ through \_\_\_\_\_.
- During June 16 through September 15, water may be diverted only when the return flow temperature is no higher than 1 degree Fahrenheit of the temperature as measured at the intake point. The permittee is encouraged to contact the Oregon Department of Fish and Wildlife for information on obtaining temperature monitoring equipment.
- Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.
- Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit.
- This use of water shall be limited when it reduces the flow of water in \_\_\_\_\_.
- The stream and the adjacent riparian area shall be fenced to exclude livestock.

## ATTACHMENT "B"

- The outlet gate shall be cycled at least once each year and shall be fully operational at all times.
- Routine maintenance of the dam, its spillway and all appurtenant structures shall be performed as necessary to remove trees, brush and debris, and to repair slumps, areas of erosion, or defective equipment.
- The earthen dam, the resultant reservoir, and the emergency spillway, shall be constructed and maintained according to the approved plans and specifications on file with the Oregon Water Resources Dam Safety program.
- Any significant change in the approved design prior to or during construction shall be documented by the project engineer in a letter to Dam Safety. All construction shall be performed under the supervision of a registered professional engineer licensed in Oregon.
- No fill shall be placed until preparation of the foundation and excavation of the core trench has been completed and examined in entirety by the engineer of record, or by the Water Resources Dam Safety Engineer, or both.
- No water shall be stored until the Water Resources Department receives written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications. If construction deviates from the approved design, a set reproducible as built drawings must accompany the engineer's written certification of completion.
- The completed structure shall not be enlarged, modified, altered or otherwise changed without the prior written approval of the Director of the Water Resources Department or the Director's authorized representative. Except for routine repair and maintenance, plans and specifications prepared by an Oregon licensed engineer are required for any significant modification, alteration, or rehabilitation of the dam, spillway or appurtenant structures.

Final

## NOAA & EPA Region 10 Comments on Information Submitted in April 1999

Discussed below are NOAA's and EPA/Region 10's comments on the information submitted by the State in April 1999 to address a number of the conditions placed on their coastal nonpoint source pollution control program.

### *I. Conditions addressed in the April 1999 Submission that may have been met:*

#### **Hydromodification**

**Finding:** Oregon's program includes management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation of the first two elements of both the channelization/channel modification management measures, the second and third elements of the eroding streambanks and shorelines management measures, and the dams management measure for erosion and sediment control. The program does not include (1) a process to improve surface water quality and restore instream and riparian habitat through the operation and maintenance of existing modified channels; (2) a process to address existing nonpoint source pollution problems caused by eroding streambanks and shorelines; and (3) the dams management measures for chemical and pollutant control and protection of surface water quality and instream and riparian habitat. In addition, exemptions in Oregon's removal-fill program may preclude the State from fully implementing the channelization, channel modification, and dams management measures.

**Condition:** Within two years, Oregon will develop processes to identify and implement opportunities to (1) improve the physical and chemical characteristics of surface waters and instream and riparian habitat in existing modified channels and (2) stabilize eroding streambanks or shorelines causing nonpoint problems that are not reviewed under existing authorities. Also within two years, Oregon will include in its program the dam management measures for chemical and pollutant control and protection of surface water quality and instream and riparian habitat in conformity with the (g) guidance. Within three years, Oregon will also either modify the exemptions to the removal-fill program or demonstrate that the exemptions do not preclude the State from fully implementing the management measures.

**Comments:** Oregon has likely satisfied this condition, *except* for the component addressing the need to include dam management measures for chemical and pollutant control and protection of surface water quality and instream and riparian habitat in conformity with the (g) guidance.

***More information is needed before a decision can be made on the dam management measures component of the condition (see Section II. On page 6).***

*Operation and maintenance of existing modified channels:* Under the Oregon Plan for Salmon and Watersheds and Executive Order No. EO99-01 issued by Governor Kitzhaber on January 8, 1999, Oregon is undertaking a number of activities that address this condition. Watershed councils are developing watershed assessments which will include a wetland characterization and functional assessment for wetlands associated with stream channels. Watershed councils will also develop watershed action plans based on the assessments. These watershed assessments and

action plans will be used in making funding decisions for restoration and other projects under the Watershed Improvement Grant Fund administered by the Governor's Watershed Enhancement Board (GWEB). State natural resource agencies will provide, to the extent feasible, technical assistance to the watershed councils in developing the watershed assessments and restoration plans. The Division of State Lands (DSL) is committed to using the information generated by the watershed assessments to update the statewide wetland inventory, which can be used to identify wetland creation and enhancement opportunities. In addition, DSL is planning to develop a non regulatory wetland restoration program, which could be applied to wetlands associated with stream channels.

The Executive Order also calls for the Department of Land Conservation and Development (DLCD), Department of Environmental Quality (DEQ), Department of Forestry (ODF), Department of Agriculture (ODA), Department of Fish and Wildlife (ODFW), and DSL and their respective boards and commissions to evaluate and implement programs to protect and restore riparian vegetation for the purpose of achieving statewide water quality standards and protecting and restoring aquatic habitat for salmonids. To address this requirement, DLCD has convened a Riparian Management Working Group with the above agencies. DLCD has also issued grants via the Healthy Streams Partnership to assist local governments in accomplishing the riparian, and in some cases wetlands, objectives of Goal 5. Goal 5 addresses the protection of natural resources, including corridors and wetlands. In addition, the Oregon Aquatic Habitat Restoration and Enhancement Guide has been completed, which provides guidance on identifying and conducting restoration activities, as well as state agency criteria and priorities for authorizing or funding all restoration projects. The Guide is a key component to the Oregon Plan comprehensive strategy for watershed restoration and enhancement, in addition to the watershed assessments and action plans discussed above. Restoration activities covered by the Guide include riparian, wetland, and in stream restoration. Examples of in stream channel restoration activities covered by the Guide include whole channel alterations and habitat construction projects. For example, the Guide notes that an important method for improving tidal wetlands is the removal, permanently opening or otherwise altering tidegates. According to the Guide, "tide gate alteration can restore wetland hydrology to a diked site making it usable for outmigrating salmonids and other water-dependent species without the chance of trapping them behind the gates." Riparian restoration activities include riparian vegetation planting and conservation programs and easements.

*Eroding streambanks or shorelines causing nonpoint source problems that are not reviewed under other authorities:*

The State notes that eroding stream banks in the 6217 management area are primarily due to forestry and agricultural practices which result in the removal of vegetation from riparian areas. Water quality and riparian habitat restoration efforts associated with Oregon's Forest Practices Act and SB 1010 include activities to stabilize stream banks. Several of these, among others, are described in the Executive Order. The opportunities for riparian corridor restoration identified via the watershed assessments, Oregon Aquatic Habitat Restoration and Enhancement Guide, and the activities of the Riparian Management Working Group, as noted above, will be helpful in addressing the effects of vegetation removal on eroding stream banks. Other important activities noted in the Executive Order include the requirement that under SB 1010 ODA will adopt

Agricultural Water Quality Management Area Plans (AWQMAPs) for Tier I and Tier II watersheds by the end of 2002. The AWQMAPs will be designed and implemented to meet load allocations for agriculture needed to achieve state water quality standards. In addition, ODA will work with ODFW, DEQ, GWEB, State Water Conservation Districts, federal agencies and watershed councils to determine what additional measures related to achieving properly functioning riparian and aquatic habitat on agricultural lands are needed to protect and restore salmonids, with first priority to areas identified in the Oregon Plan. ODA and ODF have entered into a Memorandum of Understanding with DEQ relating to the development of TMDLs and Water Quality Management Area Plans (WQMAPs). ODA will adopt and implement AWQMAPs and ODF will review the adequacy of forest practice rules to meet water quality standards. ODA and ODF will evaluate the effectiveness of these measures in achieving water quality standards on a regular basis and implement any changes required to meet the standards. Finally, within the Tillamook State Forest road network, 1,902 culverts have been replaced or added to improve road drainage and to disconnect storm water runoff from roads, thus reducing stream sediment impacts.

The State is encouraging the use of bioengineering techniques in bank stabilization projects undertaken by property owners. These projects must be reviewed and permitted by DSL and receive section 401 Water Quality Certification by DEQ. Both authorities have guidelines which favor the use of bioengineering techniques in stabilization projects.

#### *Exemptions to the Removal Fill Program:*

The Condition noted several key exemptions to the Removal Fill Program as described in the July 1995 submittal. Some important exemptions have since been removed or modified. Division 102 of the Oregon Administrative Rules (OAR) has been amended to remove the 20% limit on essential indigenous anadromous fish habitat (essential habitat) designation within a basin. The State noted that as a result of this amendment, virtually all waterbodies within the 6217 management area have been designated as essential habitat, thus effectively removing the 50 cubic yard exemption for removal fill activities. The exemption for a water rights permit for existing dams under 10 feet was removed via the repeal of Division 11.

Exemptions to the Removal Fill Program noted in the Findings that are still in place include maintenance activities associated with dikes, dams, levies and tidegates and maintenance of existing agricultural activities. The State needs to clarify their intent to modify these exemptions. Such modifications would be strengthened by using principles and recommendations contained in the Oregon Watershed Assessment Manual and The Habitat Restoration Guide. For instance when removing riparian vegetation for maintenance purposes, recommendations could be made that take slope, aspect, and vegetation type into consideration (remove from the shady side to maximize maintenance of riparian shade function).

don't plan  
to A be  
covered  
under  
water  
rights.

→ could do this  
through SB1010.

#### **Roads, Highways and Bridges**

**Finding:** For State and federal roads, Oregon's program includes management measures in conformity with the 6217(g) guidance, except the program does not include management

measures in conformity with the construction site chemical control measure, and it does not include enforceable policies and mechanisms. For local roads, highways, and bridges, Oregon's program does not include management measures in conformity with the 6217(g) guidance or enforceable policies and mechanisms to ensure implementation throughout the 6217 management area. The State has identified a backup enforceable authority for the operation and maintenance and runoff management measures but has not demonstrated the ability of the authority to ensure implementation throughout the 6217 management area.

**Condition:** Within two years, Oregon will (1) develop management measures in conformity with the 6217 (g) guidance for construction site chemical control; (2) develop enforceable policies and mechanisms to implement the roads, highways and bridges measures on all federal and State highways throughout the 6217 management area; (3) develop management measures in conformity with the 6217 (g) guidance and enforceable policies and mechanisms for local roads, highways, and bridges throughout the 6217 management area; and (4) provide a strategy (in accordance with section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of the management measures for operation and maintenance and for runoff systems, as proposed on pages 155 and 157 of the State's program submittal.

**Comments:** Oregon has likely satisfied the condition for State and federal roads.

The State is seeking an exemption for state and federal roads under National Pollution Discharge Elimination Systems (NPDES) permits. The Oregon Department of Transportation (ODOT) is in the process of obtaining a statewide NPDES MS4 permit for road construction and maintenance activities under their jurisdiction. The MS4 permit requires the development of a Water Quality Management Plan to address water quality impacts from all of ODOT's construction and maintenance activities. The protective standards of the state and federal roads and highways management measures have been incorporated into DEQ's expectations for compliance with the NPDES WQMP criteria and have been clearly communicated to ODOT. DEQ expects ODOT's permit application to be filed in September 1999 and that the permit will be issued in December 1999. This condition with respect to state and federal roads and highways will have been met once the permit is issued.

The State still needs to meet the condition with respect to local roads, highways and bridges. Under NPDES Phase II, this condition will likely be met for erosion and sediment control as it pertains to local roads.

### **Watershed Protection**

**Finding:** Oregon's program does not include management measures in conformity with the 6217(g) guidance but includes enforceable policies and mechanisms to ensure implementation throughout the 6217 management area.

**Condition:** Within three years, Oregon will further develop its program to implement the management measures for watershed protection in conformity with the 6217(g) guidance

throughout the 6217 management area.

**Comments:** Oregon has likely satisfied this condition.

Oregon requirements for local governments to adopt comprehensive plans, including requirements to direct future development within Urban Growth Boundaries (UGBs) away from sensitive areas, was noted in the (g) guidance as an example of a good watershed protection technique.

Oregon's rigid UGBs provide watershed protection benefits by confining development to a predetermined geographic boundary. The State provides extensive assistance to communities coping with population increases within the UGB, such as DLCD's Transportation Growth Management Program, which provides technical and financial assistance to local government to incorporate "Smart Growth" principals into their planning codes. The State's Transportation Planning Goal (Goal 12) and associated rules require local governments to plan for the maximum efficiency of existing road systems, as well as provisions for public transit, bicycling and pedestrian transit options. In a case where a UGB needs to be expanded, the state statute sets priorities for what lands adjacent to the UGB should be considered for inclusion, which include the consideration of environmental concerns. The statute also states that lower priority land for urbanization can be considered for inclusion into the UGB if future urban services (i.e., roads, sanitary sewers, storm sewers, other public utilities) could not be provided to the higher priority land due to topographical or physical constraints (i.e., steep erodible slopes, sensitive riparian habitat, wetlands or other areas essential to the natural drainage system of the area. The intent of these provisions is made clear in the guidelines to the Urbanization Goal (Goal 14).

The State recently revised the Open Spaces, Scenic and Historic Areas, and Natural Resources Goal (Goal 5). These revisions require local jurisdictions to inventory a number of important watershed features, including wetlands, riparian corridors, and groundwater resources, and protect those deemed to have significant value from the effects of urban development.

As noted elsewhere in this document, there are a number of activities being conducted under the Oregon Plan and the January 1999 Executive Order that are also important to the implementation of this management measure. These include DLCD's Goal 5 grant program under the Healthy Streams Partnership, which assists local governments in applying Goal 5 requirements with respect to riparian corridors and wetlands, the Riparian Management Working Group, and the watershed assessments conducted by watershed councils, which will help identify opportunities to preserve and restore areas that provide important water quality benefits or are necessary to maintain riparian and aquatic biota. In FY 1999, 14 grants were made through the Healthy Streams Partnership totaling \$319,963.

FY 97-98  
Biennium



coastal/6217 breakdown  
is possible

↳ talk to Jeff Weber

***II. Conditions addressed in the April 1999 Submission for which additional information is needed:***

**Boundary**

**Finding:** Oregon's proposed 6217 management area excludes existing land and water uses in the Umpqua, Rogue, and Columbia River basins that reasonably can be expected to have a significant impact on the coastal waters of the State.

**Condition:** Within one year, DLCD, DEQ, U.S. EPA, NOAA, and other relevant State, local, and federal agencies will participate in a cooperative process to review relevant information and determine an appropriate 6217 management area boundary consistent with established national guidance for the 6217 program.

**Comments:** At this time, we would like to discuss with the state various options to meet this condition with respect to the Columbia River Basin. Written confirmation is needed from the State that the Umpqua and Rogue River basins have been included in the 6217 management area. Further discussion with the State (primarily ODA and DEQ) is necessary, particularly regarding SB1010 and implementation of the management measures in the Columbia River basin, before a decision can be made. We reviewed the August North Coast Basin AWQMAP and noted several concerns with how this AWQMAP and others will be used to implement the management measures. In addition, we would like to discuss how the State intends to implement the urban measures as part of the 319 upgrade and the need to meet NPDES Phase II requirements.

**Hydromodification- Dam Management Measures**

**Comments:** At this time, we do not have adequate information to determine if this condition has been met. The following information is needed before a determination can be made:

1. OAR Chapter 690-310-0120 states that water quality will be addressed in the Oregon Water Resources Department's (OWRD) Public Interest Review, with special attention to TMDLs. Other than this, is there any language in rules, guidance, handbooks, etc. that would explain how NPS issues are addressed? - Amanda Punton provided a copy of OWRD's List of Commonly Used Permit Conditions. This information is currently being reviewed.
2. Written confirmation is needed from OWRD that the rules apply to maintenance and operation, as well as construction.

In addition, we also recommend that you look at the Virginia BMP manual that was sent to the states several months ago for ways to address chemical and pollution control with respect to dams. Such a manual would also be helpful in addressing the urban management measures for pollutant control.

**Other Conditions:**

Further discussion is needed before a decision can be made regarding the State's request to extend the time frame for several conditions.

Listed below are conditions that may be met under the Oregon Plan and Executive Order (requested extension times in parentheses), with the relevant activities listed below.

12: Develop and implement state measure for existing development (3 years to 5 years)

- Riparian Management Working Group
- Goal 5 changes/Healthy Streams Partnership grants
- Watershed assessments, watershed action plans and Aquatic Habitat Restoration and Enhancement Guide under the Oregon Plan

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32: Develop and implement state measure to assure the protection of riparian areas (2 years to 4 years)

- Riparian Management Working Group
- Goal 5 changes/Healthy Streams Partnership grants

33: Develop a process to promote the restoration of riparian areas (2 years to 5 years)

- Watershed assessments, watershed action plans and Aquatic Habitat Restoration and Enhancement Guide under the Oregon Plan

38: Include in its program a monitoring plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality (1 year to 5 years)

- Monitoring program component of the Oregon Plan can help meet this measure (Executive Order calls for each state agency to implement an appropriate monitoring program to assess the effectiveness of their programs and measures in meeting the Oregon Plan on an annual basis. In addition, agencies with regulatory programs that are included in the Oregon Plan will determine levels of compliance with regulatory standards and identify and act on opportunities to improve compliance levels)